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1 document. This is not one of the ones  
2 that I pulled the specific document, so  
3 that is correct.

4 Q. And which of the documents  
5 on Exhibit-A did you pull the physical  
6 documents for?

7 A. I pulled documents related  
8 to contract number 40899, I believe is  
9 the number, one of the numbers, and some  
10 of these documents have numbers on them.  
11 And many of these documents came from the  
12 contract files, and so the I pulled the  
13 contracts. And as I said, it had over  
14 half of these documents, so...

15 Q. I am just going to hand you  
16 a black pen. Why don't you use that pen  
17 and just circle on Exhibit-A the  
18 documents that you pulled physical copies  
19 for on Friday.

20 A. It's going to take a while.  
21 I am going to have to go through these  
22 documents --

23 Q. That's all right.

24 A. -- to see which of the

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1 A. I pulled contracts. In the  
2 contract files were certificates of  
3 insurance, correspondence that related to  
4 that particular contract.

5 Q. And you have circled those  
6 documents on Exhibit-1?

7 A. I haven't circled. I  
8 haven't gone through the entire exhibit  
9 and circled them, because I don't have a  
10 degree of accuracy to feel like I am  
11 telling you which ones exactly I looked  
12 at.

13 Q. What I would like you to do  
14 is I would like you to circle on  
15 Exhibit-A all of the documents that with  
16 a reasonable degree of certainty you can  
17 say, sitting here today, that you pulled  
18 and reviewed prior to the deposition.

19 A. I pulled and reviewed the  
20 agreements and related documents --  
21 documents that relate to those  
22 agreements.

23 Q. And I would like you to  
24 circle in Exhibit-A all of the ones that

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1 agreements we looked at the actual  
2 agreements.

3 MR. SCHIAVONI: I am just  
4 going to get coffee.

5 THE WITNESS: It's going to  
6 be a best guess.

7 BY MR. SCHIAVONI:

8 Q. I don't want you to  
9 speculate.

10 A. I just don't remember. I  
11 pulled documents; I compared these to say  
12 is this in our files. So for me to tell  
13 you exactly which ones -- I know I looked  
14 at all of the contracts, I know I looked  
15 at some of the letters, I looked at some  
16 of the certificates, but I am guessing as  
17 to tell you precisely which ones. And I  
18 am not really comfortable doing that.

19 Q. Okay. So if you circle all  
20 of the documents on Exhibit-1 that with  
21 some degree of reasonable certainty, you  
22 can say you reviewed and you pulled the  
23 full document and reviewed from your  
24 files?

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1 you can say with a reasonable degree of  
2 certainty you reviewed.

3 A. I don't know. I had other  
4 people do some of this for me.

5 Q. Thank you, Ms. McKee.

6 Ms. McKee, have you now  
7 circled on Exhibit-A those documents that  
8 with a reasonable degree of certainty you  
9 can say you reviewed?

10 A. Yes, sir.

11 MR. SCHIAVONI: Okay. This  
12 is a notice. I am going the mark  
13 it as B. We will mark this as  
14 Exhibit-B, McKee-B.

15 MR. PHILLIPS: It was a  
16 notice for what?

17 MR. SCHIAVONI: The notice I  
18 filed for this deposition.

19 MR. PHILLIPS: For this one?

20 MR. SCHIAVONI: Yes.

21 MR. PHILLIPS: I have never  
22 seen it.

23 MR. SCHIAVONI: You can take  
24 a look at it first.

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<p>1 Q. What did he tell you about 2 the documents, any of the documents on 3 this list?</p> <p>4 A. We didn't speak specifically 5 about the documents other than the 6 ability to definitively say that they are 7 corporate records and that we keep them 8 in the ordinary course of business. We 9 didn't discuss the content of the 10 documents at all.</p> <p>11 Q. Okay. And the counsel that 12 you spoke with on Friday, was that 13 Mr. Phillips?</p> <p>14 A. I spoke with Mr. Phillips 15 and with Mr. Roberts.</p> <p>16 Q. Did you speak with them 17 together at the same time, Mr. Phillips 18 and Mr. Roberts?</p> <p>19 A. Yes, I did.</p> <p>20 Q. Okay. Generally, was your 21 discussion with Mr. Phillips and 22 Mr. Roberts about where the documents are 23 located?</p> <p>24 A. No, it was not.</p>	<p>1 Q. I am referring back to 2 Exhibit-A, and let's look at the one that 3 you circled the documents on. Okay?</p> <p>4 A. Okay.</p> <p>5 Q. So what I would like to do 6 is refer you to the documents on 7 Exhibit-A that you did not circle. And, 8 first of all, let's turn to Exhibit-16A 9 and B.</p> <p>10 Tell us how you know this is 11 a document of the Burlington Northern 12 Santa Fe Railway or any of its 13 predecessors.</p> <p>14 A. Because it's issued to Great 15 Northern Railway Company in Saint Paul.</p> <p>16 Q. Where are insurance policies 17 like 16A kept?</p> <p>18 A. They are kept by the risk 19 management department.</p> <p>20 Q. And Exhibit-16A or B -- they 21 are pretty much identical -- does that 22 exist in the risk management department 23 of Burlington Northern Santa Fe Railway?</p> <p>24 A. In risk management or it is</p>
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<p>1 Q. Was your discussion at all 2 about the accuracy of the documents?</p> <p>3 A. We did not discuss content 4 of the documents.</p> <p>5 Q. Was your discussion at all 6 about the completeness of the documents?</p> <p>7 A. It was not.</p> <p>8 Q. So I take it you have not 9 had any discussions with anyone about the 10 accuracy or completeness of these 11 documents?</p> <p>12 A. I have not discussed the 13 content of the documents with anyone.</p> <p>14 MS ESAYIAN: Okay. I don't 15 have any further questions.</p> <p>16 MR. PHILLIPS: Thank you.</p> <p>17 Anyone else, any questions? 18 (No response.)</p> <p>19 MR. PHILLIPS: Very well. I 20 have some questions.</p> <p>21 - - -</p> <p>22 EXAMINATION</p> <p>23 - - -</p> <p>24 BY MR. PHILLIPS:</p>	<p>1 filed by risk management and corporate.</p> <p>2 Q. Are those the normal places 3 for the retention of documents or 4 insurance policies?</p> <p>5 A. Yes, they are.</p> <p>6 Q. Turning to 17 and 18, I have 7 the same questions about those.</p> <p>8 How can you tell us that 9 those are Burlington Northern documents?</p> <p>10 A. Again, it's a certificate 11 issued to Burlington Northern, Inc. in 12 Saint Paul.</p> <p>13 Q. And where are documents like 14 this found?</p> <p>15 A. Documents like this are also 16 found in either the risk management 17 department or filed in corporate support 18 as an archived record.</p> <p>19 Q. In all cases regarding 20 Exhibits 16A, B, 17 and 18, are those 21 documents over 20 years old?</p> <p>22 A. Yes, they are.</p> <p>23 Q. Do you see anything in any 24 of those documents that would give you</p>

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1 any reason to question their  
2 authenticity?  
3 A. No, I do not.  
4 Q. Turning to Exhibit-25, tell  
5 us why you believe that is a document  
6 that is a BNSF Railway document.  
7 A. Because it's addressed to  
8 T.J. Slattery, who was in-house counsel.  
9 Q. For whom?  
10 A. For Great Northern.  
11 Q. Okay.  
12 A. And because it shows a law  
13 department received stamp that I have  
14 seen on many documents in the files  
15 throughout my tenure.  
16 Q. Okay. It's a law department  
17 received stamp of which company?  
18 A. Of Great Northern Railway.  
19 Q. Is there anything in that  
20 that would indicate to you any question  
21 about its authenticity?  
22 A. No, there is not.  
23 Q. Where is this document kept?  
24 A. This document would be filed

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1 probably with the policy to which it  
2 relates.  
3 Q. Okay.  
4 MR. SCHIAVONI: Objection,  
5 calls for speculation, no  
6 foundation.  
7 MS. DeCRISTOFARO: I join.  
8 BY MR. PHILLIPS:  
9 Q. In looking at Exhibit-26,  
10 can you tell us why you believe this is a  
11 document regularly kept in BNSF Railway's  
12 documents?  
13 MR. SCHIAVONI: Leading.  
14 THE WITNESS: Because it is  
15 an internal communication between  
16 John Garing and T.J. Slattery, who  
17 were both employees of Great  
18 Northern Railway.  
19 BY MR. PHILLIPS:  
20 Q. Anything else indicating on  
21 that document?  
22 A. No, not on this one.  
23 Q. With regard to both  
24 exhibits, 25 and 26, do those documents

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1 appear to be over 20 years old?  
2 A. Yes, they do.  
3 Q. Looking at Exhibit-28, tell  
4 us whether or not you think that is a  
5 BNSF Railway or predecessor document and  
6 why.  
7 A. I believe this is a railway  
8 document because I understand that  
9 Mr. Kaufmann was an employee of the  
10 railroad. I have seen the name. It  
11 refers to a letter from Mr. Slattery.  
12 Q. Is there anything in that  
13 that would indicate to you a question  
14 about its authenticity?  
15 A. There is not.  
16 Q. And is it over 20 years old?  
17 A. Yes, it is.  
18 Q. Exhibit-29, tell us whether  
19 or not you think that is a document of  
20 the BNSF Railway, Inc. or a predecessor?  
21 A. Yes, I do, because it is  
22 addressed to Mr. J.C. Kenady.  
23 Q. From whom?  
24 A. From Mr. Slattery, again, an

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1 internal document.  
2 Q. Any question about its  
3 authenticity?  
4 A. No.  
5 Q. Is it over 20 years old?  
6 A. Yes, it is.  
7 Q. Turning to Exhibit-30, tell  
8 us whether or not you believe that is a  
9 BNSF Railway document.  
10 A. I do, because it is a letter  
11 from Mr. Kenady to Mr. Anderson at  
12 Zonolite.  
13 Q. Any question concerning its  
14 authenticity in your mind?  
15 A. No.  
16 Q. And is it over 20 years old?  
17 A. Yes, it is.  
18 Q. Look at Exhibit-32, if you  
19 would, and tell us whether or not you  
20 believe that is a BNSF Railway document.  
21 A. I do, because it's addressed  
22 to Mr. Kenady.  
23 Q. Again, who was Mr. Kenady?  
24 A. He was land and tax

35 (Pages 134 to 137)

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1 commissioner for Great Northern Railway.  
 2 Q. Is there any question about  
 3 the authenticity of this letter?  
 4 A. No, there is not.  
 5 Q. And is it over 20 years old?  
 6 A. Yes, it is.  
 7 MR. SCHIAVONI: Objection,  
 8 no foundation. I mean, Bob --  
 9 MR. PHILLIPS: I understand.  
 10 Okay. I will rephrase.  
 11 MR. SCHIAVONI: All the  
 12 witness is doing is reading the  
 13 face of the document. Unless  
 14 there is some foundation for it --  
 15 but I think that's all that's  
 16 happening, right -- I mean, there  
 17 is no inquiry that's been made to  
 18 determine how old it is. She is  
 19 just looking and seeing what the  
 20 thing says, right?  
 21 MR. PHILLIPS: Yes.  
 22 BY MR. PHILLIPS:  
 23 Q. What date does the document  
 24 bear?

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1 A. I am sorry. On number?  
 2 Q. Exhibit-32.  
 3 A. 32 bears the date  
 4 August 22nd, 1955.  
 5 Q. Looking at Exhibit-35, tell  
 6 us whether or not you believe that  
 7 document is a railway document.  
 8 A. It is a letter from T.J.  
 9 Slattery, so it would be an internal  
 10 document of the railway.  
 11 Q. Is there any question you  
 12 have about its authenticity from its  
 13 face?  
 14 A. No.  
 15 Q. And what date does it bear?  
 16 A. August 16, 1957.  
 17 Q. Looking at Exhibit-38, what,  
 18 if anything, indicates to you that that  
 19 is a BNSF Railway document?  
 20 A. It's addressed to  
 21 Mr. Kaufmann.  
 22 Q. And, again, who was he?  
 23 A. An employee of Great  
 24 Northern.

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1 Q. Do you know who Mr. Wicka  
 2 was?  
 3 A. I don't remember who  
 4 Mr. Wicka was.  
 5 Q. Is there any question that  
 6 you see from this document that would  
 7 cause you to question its authenticity?  
 8 A. No, there is not.  
 9 Q. And it bears date what?  
 10 A. August 11, 1958.  
 11 Q. Looking at Exhibit-39, can  
 12 you tell us whether or not you think  
 13 that's a BNSF Railway document.  
 14 A. I believe that it is, yes.  
 15 Q. And why?  
 16 A. It's addressed to Mr. J.C.  
 17 Kenady, who is the land and tax  
 18 commissioner, and it also bears a  
 19 received stamp of the land and tax  
 20 department that I have seen in other  
 21 documents.  
 22 Q. From which company is that  
 23 received stamp?  
 24 A. Great Northern.

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1 Q. Any question as to this  
 2 document's authenticity in your view?  
 3 A. No.  
 4 Q. And it bears what date?  
 5 A. March 25th, 1959.  
 6 Q. Looking at Exhibit-41, tell  
 7 us whether or not you believe that that  
 8 is a BNSF Railway document.  
 9 A. I believe it is because it's  
 10 addressed to Mr. Kenady.  
 11 Q. And it bears what date?  
 12 A. May 7th -- I can't read it  
 13 well -- 1950, I believe. Perhaps '59.  
 14 Q. Is there anything in that  
 15 document that would cause you to question  
 16 its authenticity?  
 17 A. No, there is not.  
 18 Q. Look at Exhibit-43.  
 19 A. (Witness complies with  
 20 request.)  
 21 Q. What, if anything, indicates  
 22 to you that this is a BNSF Railway  
 23 document?  
 24 MR. PHILLIPS: Objection.

36 (Pages 138 to 141)

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1 MR. SCHIAVONI: Objection to  
2 form. I am just going to object  
3 to this BNSF document.

4 MR. PHILLIPS: Okay.

5 MR. SCHIAVONI: Whatever  
6 that means.

7 MR. PHILLIPS: I will  
8 rephrase.

9 BY MR. PHILLIPS:

10 Q. What, if anything, indicates  
11 to you that this is a document of BNSF  
12 Railway, Inc. or any of its predecessors?

13 A. It's addressed to Mr. James  
14 Kenady, land and tax commissioner of  
15 Great Northern Railway, which is a  
16 predecessor, and it bears the same  
17 received stamp for the land and tax  
18 department of Great Northern.

19 Q. Is there any question that  
20 is raised in your mind as to the  
21 authenticity of this document?

22 A. There is not.

23 Q. And it bears what date?

24 A. May 3rd, 1961. Am I reading

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1 Q. Where was that document?

2 A. These documents -- in Great  
3 Northern day, correspondence and related  
4 documentation was filed with the  
5 contracts. That is not how we file  
6 correspondence today, but at that time it  
7 was. And those files are intact.

8 Q. Were those contracts  
9 numbered?

10 A. Yes, they were.

11 Q. And which contract was  
12 40899?

13 A. I am sorry. I don't know.  
14 Okay.

15 Q. But anyway that was one of  
16 the contracts?

17 A. It was one of the contracts  
18 I looked at, yes.

19 Q. Any question in your mind as  
20 to the authenticity of this document?

21 A. No.

22 Q. And it bears what date?

23 A. February 27, 1962.

24 Q. Looking at Exhibit-45, can

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1 it correctly? The stamp is over the  
2 date.

3 Q. I understand. It says  
4 May of 1961?

5 A. Yes.

6 Q. And look at Exhibit-44,  
7 please.

8 A. Yes.

9 Q. Can you tell us why you  
10 believe, if you do, that this is a BNSF  
11 Railway Company document or a document of  
12 one of its predecessors?

13 A. Because it is from  
14 Mr. Kenady, land and tax commissioner,  
15 and because it has a handwritten number  
16 on it that is our contract number.

17 Q. And what is that?

18 A. 40899.

19 Q. So would that document have  
20 been in your contract file?

21 A. Yes.

22 MR. SCHIAVONI: Objection to  
23 form.

24 BY MR. PHILLIPS:

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1 you tell us what, if anything, indicates  
2 to you that it is a business record of  
3 BNSF Railway, Inc. or one of its  
4 predecessors?

5 A. It's addressed to  
6 Mr. Kenady, land and tax commissioner,  
7 Great Northern Railway.

8 Q. And what date does it bear?

9 A. March 19, 1962.

10 Q. And is there anything that  
11 would indicate to you any question about  
12 its authenticity?

13 A. There is not.

14 Q. Look at Exhibit-55, please.

15 A. (Witness complies with  
16 request.)

17 Q. And would you compare that  
18 with Exhibit-56 and tell me if there is  
19 any difference between those two?

20 MS. DeCRISTOFARO: What  
21 number, Bob?

22 MR. PHILLIPS: 55 and 56.

23 THE WITNESS: They are  
24 slightly different, yes.

37 (Pages 142 to 145)

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1 BY MR. PHILLIPS:

2 Q. With regard to Exhibit-55,  
3 what indication is there, if any, that  
4 this is a record of BNSF Railway or its  
5 predecessor?

6 A. It has a received stamp that  
7 I recognize as being received in Spokane,  
8 Washington.

9 Q. What office in Spokane,  
10 Washington?

11 A. It's the superintendent.

12 Q. And was that an official  
13 with the Great Northern Railway?

14 A. Yes, it was.

15 Q. Is there any question about  
16 the authenticity of this document?

17 A. No.

18 Q. And it bears what date?

19 A. May 15, 1971.

20 Q. Look at Exhibit-59, please.

21 A. (Witness complies with  
22 request.)

23 Q. Can you tell us what, if  
24 anything, indicates that this is a

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1 Mr. Heimsjo. It also bears the stamp of  
2 the superintendent in Spokane, Washington  
3 as well as another received stamp.

4 Q. Is there any indication on  
5 this document that it is a business  
6 record of BNSF Railway or its  
7 predecessor?

8 A. Yes.

9 Q. What?

10 A. The superintendent stamp in  
11 Spokane.

12 Q. Is there any question as to  
13 its authenticity?

14 A. No.

15 Q. And it bears what date?

16 A. March 5th, 1974.

17 Q. If you would, look at  
18 Exhibit-64, please.

19 A. (Witness complies with  
20 request.)

21 Q. Is there any indication on  
22 this document as to whether it is a  
23 record of BNSF Railway, Inc. or its  
24 predecessor?

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1 business record of BNSF Railway, Inc. or  
2 one of its predecessors?

3 A. It has a received stamp of  
4 Burlington Northern, Inc. superintendent,  
5 Spokane, Washington that I recognize.  
6 It's also addressed to Burlington  
7 Northern.

8 Q. To Mr. Heimsjo in Spokane?

9 A. Correct.

10 Q. Was he the superintendent  
11 there?

12 A. Yes.

13 Q. Is there any question in  
14 your mind as to the authenticity of this  
15 record?

16 A. No.

17 Q. And it bears what date?

18 A. June 30, 1971.

19 Q. Take a look at Exhibit-60  
20 for me, please.

21 A. (Witness complies with  
22 request.)

23 Q. Tell me what that is.

24 A. It's a letter to

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1 A. It is on Burlington Northern  
2 letterhead.

3 Q. And do you recognize that  
4 letterhead?

5 A. I do.

6 Q. Any other indication?

7 A. No. It's from W.E. Bell.

8 Q. And who was he?

9 A. Acting director, insurance.

10 MS. DeCRISTOFARO: Note my  
11 standing objection. There is no  
12 foundation based on her prior  
13 testimony for any of these  
14 questions.

15 BY MR. PHILLIPS:

16 Q. And is there any question as  
17 to this document's authenticity?

18 A. There is not.

19 Q. And it bears what date?

20 A. March 8th, 1977.

21 Q. Okay. Please look at  
22 Exhibit-69, please.

23 A. (Witness complies with  
24 request.)

38 (Pages 146 to 149)

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1 Q. Is there any indication on  
2 this document as to whether or not it is  
3 a record of BNSF Railway or any of its  
4 predecessors?  
5 A. It's a letter addressed to  
6 Mr. W.E. Bell at Burlington Northern  
7 Railway, and it bears a received stamp  
8 from the railroad.  
9 Q. Is there any question as to  
10 the authenticity of this document?  
11 A. No.  
12 MS. DeCRISTOFARO:  
13 Objection, no foundation.  
14 BY MR. PHILLIPS:  
15 Q. And it bears what date?  
16 A. April 27, 1977.  
17 Q. Thank you.  
18 If you could, look at  
19 Exhibit-72.  
20 A. (Witness complies with  
21 request.)  
22 Q. Can you tell me whether or  
23 not this document has any indication that  
24 it is a record of BNSF Railway or any of

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1 MS. DeCRISTOFARO: Can you  
2 give me one second?  
3 MR. PHILLIPS: Sure.  
4 BY MR. PHILLIPS:  
5 Q. Can you tell us whether this  
6 document bears any indication that it is  
7 a BNSF Railway Company document?  
8 A. Yes, by virtue that it's  
9 addressed to Burlington Northern Railroad  
10 Company to Mr. H.E. Halweg and bears a  
11 received stamp from Burlington Northern.  
12 Q. Is there any question as to  
13 this document's authenticity?  
14 A. No, there is not.  
15 MS. DeCRISTOFARO:  
16 Objection, no foundation.  
17 BY MR. PHILLIPS:  
18 Q. And it bears what date?  
19 A. July 18, 1984.  
20 Q. Now, referring to  
21 Exhibit-81, do you have that before you?  
22 A. Yes, I do.  
23 Q. To whom is this letter  
24 addressed?

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1 its predecessors?  
2 A. It's addressed to  
3 Mr. Halweg, who was the director of  
4 Burlington Northern, and it bears a  
5 received stamp of the railroad.  
6 Q. Of which company?  
7 A. Burlington Northern, Inc.  
8 Q. Was that the name of the  
9 company in 1978?  
10 A. Yes, it was.  
11 Q. And this letter bears what  
12 date?  
13 A. July 11, 1978.  
14 Q. Is there any question as to  
15 this document's authenticity?  
16 A. No.  
17 MS. DeCRISTOFARO:  
18 Objection, no foundation.  
19 BY MR. PHILLIPS:  
20 Q. Would you look at  
21 Exhibit-79, please?  
22 A. (Witness complies with  
23 request.)  
24 Q. Can you tell us whether --

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1 A. It's addressed to Mr. Jon  
2 Moyers at Hedger Moyers.  
3 Q. And do you know who  
4 Mr. Moyers is?  
5 A. I do. And I believe I  
6 answered earlier that I did not, but  
7 associating with the company, I do.  
8 Q. Okay. And who is  
9 Mr. Moyers?  
10 A. Outside counsel for the  
11 railroad.  
12 Q. Now, where are documents  
13 like this kept?  
14 A. By the claims department.  
15 Q. And does this appear to you  
16 to be a document regularly kept in the  
17 course of business by BNSF Railway?  
18 A. It does.  
19 Q. And this is a letter from  
20 which company to which person?  
21 A. It's a letter from Zurich to  
22 BNSF's outside counsel.  
23 Q. Okay.  
24 A. Burlington Northern, I mean.

39 (Pages 150 to 153)

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1 Q. And I probably asked you  
2 this: Is this a document that's  
3 regularly kept in the course of business  
4 at BNSF?

5 A. Yes.

6 MR. IFFT: Objection,  
7 foundation.

8 MR. PHILLIPS: Objection?

9 MR. IFFT: No foundation.

10 MR. PHILLIPS: So are you  
11 questioning the authenticity of  
12 81?

13 MR. IFFT: You are going  
14 through this exercise, Bob, which  
15 you seem to feel a need to do, and  
16 if you want to do that, that's  
17 fine. But I don't think you have  
18 laid the foundation, if that's  
19 what you are trying to do.

20 MR. PHILLIPS: Well, I don't  
21 need to if you are not going to  
22 object to it.

23 MR. IFFT: I am not going to  
24 do it on the record. I will talk

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1 a document regularly kept in the course  
2 of business at BNSF Railway Company?

3 A. Yes, it does.

4 Q. And how do you know that?

5 A. It's addressed to Burlington  
6 Northern and Santa Fe Railway, and it's  
7 addressed to Paul Hoferer, who was vice  
8 president and general counsel.

9 Q. And where is this document  
10 kept?

11 A. By the claims department.

12 Q. Now, the documents that you  
13 have earlier said that you looked at,  
14 what did you mean by that, the ones that  
15 you have circled on Exhibit-A?

16 A. I actually went into the  
17 warehouse or I had other people do for me  
18 and pull files, and we went through  
19 files. And we compared them to  
20 documents, and we did a sampling to  
21 prepare for this deposition. We had  
22 short notice and did what we could.

23 Q. Did you determine whether or  
24 not those documents are documents

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1 to you about it afterwards.

2 MR. PHILLIPS: Very well.

3 MR. IFFT: You are the one  
4 that feels compelled to do this,  
5 so I am going to make my  
6 objections.

7 MR. PHILLIPS: And I will  
8 just state briefly what I am  
9 trying to do is avoid calling this  
10 witness as a witness at the  
11 hearing and lay a foundation for  
12 such documents as I can in order  
13 to make it briefer. But I  
14 understand your objection.

15 MR. IFFT: Okay.

16 BY MR. PHILLIPS:

17 Q. Would you look at  
18 Exhibit-82, please?

19 A. (Witness complies with  
20 request.)

21 Q. And do you recognize that  
22 document?

23 A. Yes, I do.

24 Q. Does it appear to you to be

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1 regularly kept in the course of business  
2 of BNSF Railway or any of its  
3 predecessors?

4 A. Yes, we did.

5 MR. SCHIAVONI: Objection to  
6 form.

7 BY MR. PHILLIPS:

8 Q. And did you have any  
9 question or concern as to the  
10 authenticity of any of those documents?

11 A. I --

12 MR. SCHIAVONI: Objection to  
13 form.

14 THE WITNESS: I did not.

15 MR. PHILLIPS: You need to  
16 pause for a second before you  
17 answer.

18 THE WITNESS: Sorry.

19 BY MR. PHILLIPS:

20 Q. And were those documents in  
21 a location where if they were authentic  
22 would likely be?

23 MR. SCHIAVONI: Objection to  
24 form.

40 (Pages 154 to 157)

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1 THE WITNESS: They were in  
2 the same location as other similar  
3 documents that are kept in the  
4 ordinary course of business.  
5 MS. DeCRISTOFARO: All these  
6 objections, also for lack of  
7 foundation.  
8 BY MR. PHILLIPS:  
9 Q. So that being the case, were  
10 they in a place where, if authentic, they  
11 would likely be?  
12 MR. SCHIAVONI: Objection to  
13 form.  
14 MS. DeCRISTOFARO: I join.  
15 THE WITNESS: Yes.  
16 BY MR. PHILLIPS:  
17 Q. And have all of those  
18 documents been in existence for more than  
19 20 years?  
20 MR. SCHIAVONI: Objection to  
21 form, absolutely no foundation.  
22 MR. PHILLIPS: Okay.  
23 MS. DeCRISTOFARO: I join.  
24 BY MR. PHILLIPS:

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1 Q. Do they all bear a date of  
2 more than 20 years ago, if you look at  
3 Exhibit-80? That's the last one you  
4 circled.  
5 A. They do.  
6 MR. PHILLIPS: Thank you. I  
7 have no other questions.  
8 MS. DeCRISTOFARO: I have a  
9 few followup.  
10 - - -  
11 EXAMINATION  
12 - - -  
13 BY MS. DeCRISTOFARO:  
14 Q. Ms. McKee, would you put  
15 Exhibit-17 in front of you?  
16 A. (Witness complies with  
17 request.)  
18 Q. Is it your testimony that  
19 that comes from the railroad's files?  
20 A. From their files, yes.  
21 Q. And do you know when it was  
22 put into is the railroad's files?  
23 A. The document is dated  
24 June 30, 1977.

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1 Q. And is it your testimony  
2 that it's been in the railroad's files  
3 since 1977?  
4 A. I didn't work for the  
5 railroad in 1977, so I can't --  
6 Q. So you can't testify when  
7 that was put in the file?  
8 A. When it was put in the file,  
9 no, I cannot.  
10 MS. DeCRISTOFARO:  
11 Mr. Phillips, I have extreme  
12 reservations about the practices  
13 that are being engaged in, since  
14 there is an indication that  
15 documents have previously not been  
16 in the railroad's files and are  
17 now being represented as being in  
18 the railroad's files. And I am  
19 reserving all rights regarding her  
20 testimony and what's been  
21 happening here.  
22 MR. IFFT: And I would like  
23 to follow up with some similar  
24 questions.

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1 - - -  
2 EXAMINATION  
3 - - -  
4 BY MR. IFFT:  
5 Q. Can I ask you to turn to  
6 16A?  
7 A. (Witness complies with  
8 request.)  
9 Q. Ms. McKee, I believe 16A, as  
10 opposed to B, the darker one, I believe  
11 it was your testimony that you believe  
12 this is a document that has been in the  
13 risk management department of BNSF or its  
14 predecessors since approximately the date  
15 that's on the document. And just for the  
16 record, it's a policy showing a date from  
17 April 20, 1971 through April 20, 1974.  
18 A. Yes.  
19 Q. Is that your testimony?  
20 A. As I answered the last  
21 question, I didn't work for the railroad  
22 in the '70s, so I can't say when it was  
23 put in the file.  
24 Q. So, for all you know, it

41 (Pages 158 to 161)